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News Release

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Owner of nursing professionals company sentenced for failing to pay employment taxes

A 60-year-old Livingston, Mont., man was sentenced today in federal court for failing to pay employment taxes.

On Sept. 11 in St. Paul, United States District Court Judge Patrick Schiltz sentenced Francis Leroy McLain to 48 months in prison, three years of supervised release and was ordered to pay a \$75,000 fine for failure to withhold and pay employment taxes. McLain was indicted on Jan. 8, 2008, and was convicted by a jury of eight counts of employment tax fraud on Nov. 17, following a week-long trial.

Evidence at trial showed that McLain willfully failed to withhold and pay to the Internal Revenue Service federal income taxes on the wages of his employees. McLain owned Kirpal Nurses, d/b/a Kind Hearts, a Minneapolis-based company that supplied nurses and other nursing professionals to health care facilities on a temporary basis. McLain also failed to pay those employees' share of Federal Insurance Contribution Act (FICA) taxes. McLain's criminal conduct spanned nine calendar quarters, and the unpaid federal employment taxes totaled more than \$500,000.

At trial, the government argued that McLain was no stranger to the federal tax requirements of those in the business of providing temporary nursing care. Prior to operating Kirpal Nurses, which McLain did from 2001 through 2004, he owned and operated several similar businesses, including Lifelines Care, Inc.; Lifelines Cooperative Care, Inc.; and Cooperative Nurses, Inc.

During that time, McLain brought several federal lawsuits against the U.S., claiming the nursing professionals who worked for him were independent contractors rather than employees. The U.S. disagreed and countersued; and in 1998, the civil lawsuits were settled. As part of that settlement, McLain agreed to withhold and pay employment taxes for all nursing professionals who worked for any of his businesses.

Between June 1999 and December 2001, McLain paid the IRS some of the employment taxes he owed. From 2002 through 2005, he certified to the Minnesota Department of Health that the nurses who worked at his companies were indeed his employees. And, in December 2002, he paid the IRS approximately \$4,200 in employee-related taxes for the calendar quarter ending Dec. 31, 2002.

That payment, however, was the last employment tax payment he made to the federal government; and since that time, he has taken steps to hide his ownership and involvement in Kirpal Nurses, including reincorporating the same business under new names, using multiple bank accounts to direct funds from the company to himself, and claiming that others with little or no involvement in the business were responsible for its operation.

In addition to employment tax fraud, McLain also did not file personal income taxes for the years in question. The district court found that the total amount of tax-related fraud to be in excess of \$1 million.

This case was the result of an investigation by the IRS-Criminal Investigation Division and was prosecuted by Assistant U.S. Attorneys David M. Genrich and Michael L. Cheever.